APPENDIX 1

TO PETITION FOR WRIT OF CERTIORARI

JUDGMENT OF DISMISSAL
ENTERED BY THE SUPERIOR COURT
OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE

VOZNICK V. SHURFLO

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FILED
Superior Court of California
County of Orange
Central Justice Center
OCT 04 2002
Alan Slater, Clerk of the Court
By: /s/ A. DANG Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

HAL VOZNICK, Plaintiff, vs. SHURFLO, INC., TOM HARDESTY, KEVIN McLEAN, RUSSELL PHILLIPS, JACK HOSIER JANET SCOTT, MIKE SAVALIEV, AND Does 1 to 100, Defendants.	**CASE NO.: CC 03647** Case assigned for all purposes to: The Hon. Clay M. Smith, Dept. C-64 **NOTICE OF ENTRY OF JUDGMENT** COMPLAINT FILED: March 16, 2001 DCO: August 19, 2002 MCO: August 19, 2002 TRIAL DATE: November 27, 2002

TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that the above-entitled action was dismissed pursuant to the Minute Order dated September 6, 2002 and the attached Judgment of Dismissal signed on October 1, 2002 by the Honorable Clay M. Smith, Judge of the Superior Court.

Dated: October 3, 2002 JACKSON LEWIS LLP

By: /s/Parnell G. Fox
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FILED
Superior Court of California
County of Orange
Central Justice Center
OCT 01 2002
Alan Slater, Clerk of the Court
/s/ C. Hein Deputy
By: C. HEIN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

HAL VOZNICK, Plaintiff, vs. SHURFLO, INC., TOM HARDESTY, KEVIN McLEAN, RUSSELL PHILLIPS, JACK HOSIER JANET SCOTT, MIKE SAVALIEV, AND Does 1 to 100, Defendants.	**CASE NO.: CC 03647** Case assigned for all purposes to: The Hon. Clay M. Smith, Dept. C-64 **JUDGMENT OF DISMISSAL (CCP § 437c)¶** COMPLAINT FILED: March 16, 2001 DCO: August 19, 2002 MCO: August 19, 2002 TRIAL DATE: November 27, 2002

The Court, having granted the motion of Defendant Shurflo, Inc. for summary judgment, said order having been reduced to a Minute Order dated September 6, 2002 and pursuant to Code of Civil Procedure section 437c:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this action be and is hereby dismissed against Defendant Shurflo, Inc., pursuant to said order and said statutory authority and that said Defendant be awarded costs of suit as provided by law.

DATED: OCT 1 2002 CLAY M SMITH
JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

CASE NAME: **Hal Voznick *v.* Shurlfo, Inc. et al.**

CASE NUMBER **01 CC 03647**

I am employed in the County of LOS ANGELES, State of California. I am over the age of 18 and not a party to the within action; my business address is:

[X] 725 South Figueroa Street, Suite 2500, Los Angeles, California 90017

On September 10, 2002, I served the foregoing document described as;

JUDGMENT OF DISMISSAL

in this action by placing a true copy thereof as follows:

Robert G. Schwartz, Esq.
SCHWARTZ & MEDINA
1131 West Sixth Street, Suite 300
Ontario, California 91762

[X] **BY MAIL**

[X] I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

Executed on September 10, 2002, at Los Angeles, California.

[X] STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

/s/_____

Mina Tunson

APPENDIX 2

TO PETITION FOR WRIT OF CERTIORARI

OPINION OF THE CALIFORNIA STATE DISTRICT COURT OF APPEAL FOURTH APPELLATE DISTRICT

VOZNICK V. SHURFLO

*2004 Cal. App. Unpub. LEXIS 2493, **

HAL VOZNICK, Plaintiff and Appellant, *v.* SHURFLO, INC., Defendant and Respondent.

G031506

COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT, DIVISION THREE

2004 Cal. App. Unpub. LEXIS 2493

March 18, 2004, Filed

NOTICE: [*1] NOT TO BE PUBLISHED IN OFFICIAL REPORTS CALIFORNIA RULES OF COURT, RULE 977(a), PROHIBITS COURTS AND PARTIES FROM CITING OR RELYING ON OPINIONS NOT CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED, EXCEPT AS SPECIFIED BY RULE 977(B). THIS OPINION HAS NOT BEEN CERTIFIED FOR PUBLICATION OR ORDERED PUBLISHED FOR THE PURPOSES OF RULE 977.

PRIOR HISTORY: Appeal from a judgment of the Superior Court of Orange County. (Super. Ct. No. 01CC03647). Clay M. Smith, Judge.

DISPOSITION: Affirmed.

CORE TERMS: good cause, memorandum, secondary evidence, conflict of interest, distributor, pumps, summary judgment, vice president, filters, lied, buy, manager, hearsay, pretext, lying, water, acted reasonably, admissible, misconduct, deposition testimony, financial interests, abuse of discretion, offered to prove, undisputed facts, triable issues, disputed fact, implied-in-fact, participated, foodservice, terminated

COUNSEL: Schwartz & Medina and Robert G. Schwartz for Plaintiff and Appellant.

Jackson Lewis; Robert Campbell and Parnell Fox for Defendant and Respondent.

JUDGES: BEDSWORTH, ACTING P. J. WE CONCUR: ARONSON, J., FYBEL, J.

OPINION BY: BEDSWORTH

OPINION: Hal Voznick appeals from a judgment that dismissed this wrongful termination action after his former employer, Shurflo, Inc., prevailed on a motion for summary judgment. Voznick argues there are triable issues of fact on whether he was an at-will employee, and whether there was good cause for discharge. We disagree on the good cause issue, and finding that determinative, we affirm.

In 1990, Voznick was hired as a project engineer by Shurflo, a manufacturer of water pumps, filters, and related **[*2]** products.

In 1992, he was promoted to Water Market Manager in the Water Market Department of the company.[1] His responsibilities included promoting and marketing water pumps and filters in Taiwan and other parts of Asia. He also served as one member of a three-person committee that set the prices for these products.

By 1997, with Asian sales declining, Voznick and several other managers collectively decided to reduce prices and sell at zero profit in an attempt to retain their market share in Asia. Voznick selected Acquamaster as the company's Taiwan distributor. He told Acquamaster to sell at the local market price.

A January 2001 telephone call began a series of events that led to Voznick's dismissal. A stranger who identified himself as Bill Henry called Shurflo's customer service manager, Kevin McLean. He had a tip: an employee was stealing filters,

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[1] The facts are based on the parties' statements of undisputed facts and the evidence submitted on the motion for summary judgment.

relabeling them, and [*3] shipping them to Asia for a company of his named Vertex. Henry wanted a finder's fee before he would say more. McLean had inventory checked and nothing was found missing, and he told Voznick of the call. When Henry next called, McLean said he had told Voznick about the allegations, and Henry then revealed that Voznick was the employee in question. Henry also said Vertex was operated by Voznick's father and brother under assumed names, and it had a warehouse in Chino.

McLean memorialized these events in a memorandum to the company's personnel director. Senior managers decided the matter should be investigated by Voznick's immediate supervisor, marketing director Tom Hardesty.

Hardesty interviewed Voznick. Hardesty related most of what Henry had said, but apparently not the claim that Voznick's father and brother ran Vertex. Voznick said he did not know Bill Henry or Vertex, even after Hardesty spelled the latter name because he was not sure if he was pronouncing it correctly. When Hardesty asked Voznick how someone might associate his name with filters, Voznick said his father had recently fired someone from his real estate business for stealing. Hardesty gave Voznick the address [*4] he had for Vertex and asked if that was one of his father's properties. Voznick said it was not. Hardesty said others knew of Henry's claims, and he could work with Voznick to try and straighten out the matter, but he needed to know if there was anything more he should know.

Only then was Voznick more forthcoming. Voznick admitted that Vertex is a company run by his father and brother, using assumed names so people in the industry would not know they are related to him. He showed Hardesty a Vertex ad in a water magazine. When asked about his involvement with Vertex, Voznick said he was an advisor on vendors from whom Vertex could obtain products. Vertex used Shurflo's pumps. They did not buy directly from Shurflo, but rather from its Taiwan distributor, Acquamaster. Hardesty said this was a conflict of interest because Voznick was responsible for

negotiating prices with Acquamaster, and he had advised his father to buy from Acquamaster instead of a U.S. distributor. Voznick replied he had not changed the pricing for Acquamaster in some time, and Vertex only purchased a small number of pumps. According to Hardesty, Voznick offered to resign.

Hardesty spoke with the vice president **[*5]** of foodservice, and then both met again with Voznick. When Voznick tried to minimize the seriousness of the situation, the vice president pointed out the conflict between setting prices and advising Vertex to buy from Acquamaster. Hardesty added Voznick had initially lied. Voznick apologized, but said he had changed his mind and no longer was willing to resign.

The following day, a Saturday, Voznick called Hardesty at home. He felt bad about what had happened. His father had encouraged him to disclose the Vertex relationship, but the timing never seemed right. He wanted Hardesty to inspect the Vertex facility to see that it was a very small business. Hardesty declined.

On Sunday, Hardesty and the foodservices vice president met with the company president to fill him in on what they had learned. All agreed that Voznick should be dismissed for the conflict of interest and for lying about it. Hardesty then discussed the situation with Shurflo's vice president of personnel, who concurred that Voznick's employment should be terminated. They notified Voznick of the decision the following day. About a week later, Hardesty prepared a memorandum of these meetings and interviews, based on **[*6]** notes he took at the time, after which he destroyed the notes.

Voznick sued for wrongful termination. The complaint set out multiple theories, but all save a breach of contract claim were dismissed. The contract claim alleges an express and implied-in-fact contract that Voznick could only be dismissed for good cause. The contention is that he was effectively

terminated without good cause when denied a meaningful opportunity to respond to the allegations against him.

Shurflo moved for summary judgment on the theory that Voznick was an at-will employee, and, even if not, good cause existed to terminate his employment. Voznick asserted the existence of triable fact questions on both issues, and he objected to the McLean and Hardesty memoranda. Shurflo objected to portions of Voznick's deposition testimony that was offered to show a fact dispute.

The trial judge found Shurflo had good cause because it reasonably believed Voznick acted against its interest in his dealings with Vertex, and then lied about the situation. He overruled Voznick's objections and sustained Shurflo's. Judgment was entered dismissing the complaint.

I

Voznick argues there are disputed fact questions [*7] whether Shurflo's reasons for dismissing him were given honestly in good faith, whether they were arbitrary and a pretext, and whether the investigation was fair. We cannot agree.

Where there is an implied agreement not to dismiss an employee except for good cause, the question for the jury is not whether the employee in fact committed the act that led to dismissal. Rather, the inquiry focuses on the employer's response to the alleged misconduct: "'Was the factual basis on which the employer concluded a dischargeable act had been committed reached honestly after an appropriate investigation and for reasons that are not arbitrary or pretextual?'" (*Cotran v. Rollins Hudig Hall Internat., Inc.* (1998) 17 Cal. 4th 93, 107.) An appropriate investigation is one where the company gives the employee a fair opportunity to present his position, and to dispute relevant statements that are harmful. (*Silva v. Lucky Stores, Inc.* (1998) 65 Cal.App.4th 256, 264.)

In this case, the undisputed facts show Shurflo had good cause to dismiss Voznick. Hardesty's investigation was appropriate. Presented with a tip that associated Voznick with Vertex and some misdoings involving **[*8]** Shurflo products, Hardesty spoke to Voznick, and asked for his side of the story. Based on the information Hardesty gathered, Shurflo believed Voznick had acted against its financial interest and lied about his conflict of interest.

Whether that was the right conclusion, or whether in fact Voznick lied or acted against the company's interest, is beside the point. Shurflo was entitled to believe Hardesty, and it was reasonable to conclude Voznick put his father's financial interests ahead of Shurflo's. Voznick knew Shurflo sold to Acquamaster at cost, having participated in setting that price, and every purchase from the overseas distributor would be one less from a domestic distributor from whom Shurflo made a profit. Nothing suggests that conclusion was reached in bad faith, or dishonestly, nor that it was a pretext for dismissing Voznick for other reasons. Good cause existed.

Voznick contends there are triable issues because he denied lying to Hardesty (long after the fact, at his deposition), and there is no evidence of the price at which Vertex bought Shurflo products. But that demonstrates a misunderstanding of the *Cotran* standard. The question is whether it was reasonable **[*9]** for Shurflo to believe Hardesty's report of his investigation, not whether Hardesty was right. Likewise, the investigation was not deficient for failing to find out if Vertex actually bought from Acquamaster or the price it paid. From the company's point of view, the harm occurred when Voznick directed his father to a source from which it made no profit. That put Voznick's own interest above the company's, which it could legitimately regard as a conflict of interest.

Voznick's bad faith argument is that there was evidence he was dismissed because Hardesty wanted to remove a rival, and the investigation was unfair because Hardesty omitted exculpatory statements that Voznick had made. But no evidence of the former is offered. The latter amounts to

Voznick's claim that he did not lie about knowing Vertex, but that is immaterial, since Shurflo was entitled to rely on Hardesty's report of the interview. There is no triable issue here.

The arbitrary/pretext argument is that Voznick was dismissed to prevent him from working for a competitor, and the justification of conflict of interest and dishonesty was trivial compared with his ten-plus years of service. We disagree. No evidence is **[*10]** cited that even hints Voznick was thinking of working for a competitor, or that anyone at Shurflo was concerned about this risk. Moreover, there is nothing trivial about lying to one's employer, or depriving it of a profit by advising a family business to buy in the overseas market where the employer has sold its products at cost. There is no disputed fact issue here, so no triable issues regarding good cause precluded summary judgment for Shurflo.

II

Voznick argues the McLean and Hardesty memoranda should have been excluded as hearsay and, in the case of the latter, on other grounds as well. We cannot find any error.

The trial court admitted both memoranda not for the truth of the statements made, but rather as evidence that Shurflo acted reasonably in terminating Voznick. That was within its discretion. "Where the reasonableness of a person's conduct is at issue, statements of others on which he acted are admissible. [Citations.] Thus, materials generated during the employer's investigation of misconduct under *Cotran* are admissible to establish that the investigation took place, that it was appropriate under the circumstances and that the termination decision was reasonable **[*11]** based on that information." (*Silva v. Lucky Stores, Inc., supra,* 65 Cal.App.4th at p. 265.)

Voznick challenges the McLean memo on grounds that, frankly, we cannot follow. As best we can figure out, he argues *Silva* is distinguishable because some of the information in the memo is false or untrustworthy. But the

truth of the statements is not in issue, since they were offered to show Shurflo acted reasonably on the facts it had. And arguments that they were flawed would go to their weight, not their admissibility. We cannot find any abuse of discretion in admitting the McLean memorandum.

As for the Hardesty memorandum, Voznick argues it should have been excluded as hearsay, secondary evidence, irrelevant, and lacking foundation. We disagree.

The hearsay argument is that Henry's accusations, recounted by Hardesty, are unreliable, and Hardesty's meetings with other mangers were not part of an investigation. This is grasping at straws. The accusations that give rise to an investigation are surely part of it, as is deciding what to do about the information gathered during the inquiry. The trial judge acted within his discretion when he admitted the Hardesty memorandum **[*12]** under *Silva*.

Voznick contends the Hardesty memorandum was inadmissible secondary evidence because Hardesty destroyed his original notes, which made it impossible to examine Hardesty about the contents of the document or verify its accuracy. He is mistaken. The memorandum was not offered to prove the contents of a writing (Hardesty's notes), but rather to show what transpired during the course of the investigation, and it is hard to see how there is a secondary evidence issue.[2] Voznick deposed Hardesty, and Hardesty testified that he prepared the memorandum from notes taken at the time of each meeting, with one exception that is not relevant. He compared the notes with the memorandum, and the latter accurately reflected everything in the notes. On this record, there is no evidence of any genuine dispute over the

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[2] Secondary evidence may be offered to prove the contents of a writing, unless the court determines a genuine dispute exists concerning the material terms of the writing and justice requires excluding secondary evidence, or admission of the secondary evidence would be prejudicial. (Evid. Code, § 1521, subd. (a).

material terms of an original writing, nor prejudice in admitting secondary evidence, so there was no abuse of discretion in overruling the secondary evidence objection.

[*13]

Little need be said of the foundation and relevancy arguments. Voznick fails to state what foundation was laid, or explain why it was insufficient. Nor does he explain why the memorandum might be irrelevant. This fails to carry an appellant's burden of affirmatively demonstrating error. The trial judge acted within his discretion in overruling the foundation and relevancy objections. The upshot is the McLean and Hardesty memoranda were properly admitted in evidence.

III

Finally, Voznick argues it was error to exclude his deposition testimony that he did not set prices for Asian markets, but rather participated in establishing those prices as one member of a three person committee. We cannot agree.

Whether or not Voznick set prices alone or with others, the fact remains that he told his father Shurflo pumps could be purchased from Acquamaster, knowing Shurflo made no profit on such sales. With that information, it was reasonable Shurflo to conclude Voznick had worked against the company's financial interests, and decide dismissal was warranted. So any error here was harmless.

Since the undisputed evidence shows Shurflo had good cause to dismiss Voznick, it was entitled to **[*14]** summary judgment on his claim for breach of an express or implied-in-fact contract not to terminate his employment except for good cause.

The judgment appealed from is affirmed. Respondent is entitled to costs on appeal.

BEDSWORTH, ACTING P. J.

WE CONCUR:

ARONSON, J.

FYBEL, J.

APPENDIX 3

TO PETITION FOR WRIT OF CERTIORARI

CALIFORNIA STATE
DISTRICT COURT OF APPEAL
FOURTH APPELLATE DISTRICT
NOTICE OF DENIAL OF
PETITION FOR REHEARING

VOZNICK V. SHURFLO

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION THREE

FILED Apr 19 2003

HAL VOZNICK
Plaintiff and Appellant,

v.

SHURFLO INC.,
Defendant and Respondent

G031506

Sup. Ct. No. 01CC03647

ORDER

The petition for rehearing is DENIED.

/s/_____
BEDSWORTH, ACTING P.J.

WE CONCUR:

/s/_____
ARONSON, J.

/s/ _____
FYBEL, J.

cc: See attached list

APPENDIX 4

TO PETITION FOR WRIT OF CERTIORARI

CALIFORNIA SUPREME COURT

DENIAL OF PETITION FOR REVIEW

VOZNICK V. SHURFLO

Court of Appeal, Fourth Appellate District,
Division Three – No. G031506
S124413

IN THE SUPREME COURT OF CALIFORNIA

En Banc

HAL VOZNICK, Plaintiff and Appellant,

v.

SHURFLO INC., Defendant and Respondent.

Petition for review DENIED.

SUPREME COURT
FILED
JUN 9 2004

Frederick K. Ohlrich Clerk
Deputy

GEORGE
Chief Justice